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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,523	12/12/2003	Masakatsu Endo	NGBCP002	9990

25920 7590 06/25/2007
MARTINE PENILLA & GENCARELLA, LLP
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EXAMINER

BRINICH, STEPHEN M

ART UNIT	PAPER NUMBER
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2625

MAIL DATE	DELIVERY MODE
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06/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10734523	12/12/03	ENDO ET AL.	NGBCP002

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EXAMINER

Stephen M. Brinich

ART UNIT	PAPER
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2625

20070619

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Office Action Summary	Application No. 10/734,523	Applicant(s) ENDO ET AL.	
	Examiner Stephen M. Brinich	Art Unit 2625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 is/are allowed.
- 6) ☒ Claim(s) 11 and 12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/21/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 11-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 11-12 are drawn to functional descriptive material NOT claimed as residing on a computer readable medium. MPEP 2106.IV.B.1(a) (Functional Descriptive Material) states:

Data structures not claimed as embodied in a computer-readable medium are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer.

Such claimed data structures do not define any structural or functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized.

Claims 11-12, while defining a computer program, do not define a "computer-readable medium" and is thus non-statutory for that reason. A computer program can range from paper on which the program is written, to a program simply contemplated and memorized by a person. The examiner suggests amending the

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claim to embody the program on "computer-readable medium" (e.g. "a computer-readable medium storing a computer program...") in order to make the claim statutory.

In contrast, a claimed computer-readable medium encoded with the data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory." - MPEP 2106.IV.B.1(a)

Allowable Subject Matter

3. Claims 1-10 are allowed.
4. Claims 11-12, insofar as they are understood, would be allowable if rewritten or amended to overcome the rejection(s) under 35 USC §101, set forth in this Office action.
5. The following is a statement of reasons for the indication of allowable subject matter:

Re claims 1 & 8-10 (and dependent claims 2-7 & 11-12) the art of record does not teach or suggest the recited combination of text command and binary command arrangements in conjunction with image processing.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Tamaki et al and Kono et al disclose examples of languages used for image processing commands.

7. Any inquiry concerning the contents of this communication or earlier communications from the examiner should be directed to Stephen M. Brinich at 571-272-7430.

Any inquiry relating to the status of this application or proceeding or any inquiry of a general nature concerning application processing should be directed to the Tech Center 2600 Customer Service center at 571-272-2600 or to the USPTO Contact Center at 800-786-9199 or 571-272-1000.

The examiner can normally be reached on weekdays 8:00-5:30, alternate Fridays off.

The examiner's unit designation has been changed from "Art Unit 2624" to "Technology Division 2625" (as of March 20, 2006).

If attempts to contact the examiner and the Customer Service Center are unsuccessful, supervisor David Moore can be contacted at 571-272-7437.

Faxes pertaining to this application should be directed to the Tech Center 2600 official fax number, which is 571-273-8300 (as of July 15, 2005).

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Hand-carried correspondence may be delivered to the
Customer Service Window, located at the Randolph Building, 401
Dulany Street, Alexandria, VA 22314.

A handwritten signature in black ink, reading "Stephen Brinich". The signature is written in a cursive style with a large, stylized 'S' and 'B'.

Stephen M Brinich

Examiner

Technology Division 2625

smb

June 19, 2007